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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/980,649

06/04/2002

Pierre Belhumeur

1051-1-019

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7590
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411 Hackensack Avenue
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09/26/2008

EXAMINER

KIM, TAEYOON

ART UNIT

PAPER NUMBER

1651

MAIL DATE

DELIVERY MODE

09/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/980,649</p>	<p>Applicant(s) BELHUMEUR ET AL.</p>	
	<p>Examiner TAEYOON KIM</p>	<p>Art Unit 1651</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 3 and 5-15.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☒ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Leon B Lankford/
Primary Examiner, Art Unit 1651

Continuation of 11. does NOT place the application in condition for allowance because:

In the response to the previous office action, Applicant argued that the claimed invention is a method for evaluating the efficiency of a sterilization process whereas the teaching of Safar et al. is to study the thermal stability and conformational transitions of scrapie amyloid protein and its correlation with infectivity. The current claims are drawn to a method of subjecting a prion protein and determining the level of degradation, and the teaching of Safar et al. is considered the same method step since Safar et al's method is subjecting a scrapie amyloid protein, which is a prion, upon thermal exposure and evaluate the inactivity of the treated prion protein. Thus, the process of Safar et al. is substantially similar, if not identical, to the claimed method steps. With regard to the intended use of the method steps in evaluating the efficiency of a sterilization process, the method of Safar et al. is in fact considered as an evaluating process to determine effective and efficient ways to inactivate prion proteins.

Applicant also argued that the yeast prion proteins claimed in the current invention are not analogs of their mammalian counterpart, and there is no teaching, motivation, suggestion to substitute the prion protein of Safar et al. with yeast prion. This argument is not persuasive since Coustou et al., Glover et al. and Wickner teach that the yeast prions are analogs of a mammalian prion. Applicant argues that the yeast proteins and mammalian prion proteins share low level of sequence homology, or other biochemical properties. However, considering that these yeast proteins are recognized as "prion proteins" and known as analogs of the mammalian counterpart in the art, it would have been obvious to a person of ordinary skill in the art to try the yeast prion proteins in the place of mammalian prion proteins. See KSR v. Teleflex (550 US82 USPQ2d 1385, 2007) and M.P.E.P. §2141.

Based on the above discussion, the argument and the current amendment does not place the instant application in condition for allowance.

Taeyoon Kim